

House Bill 470 (AS PASSED HOUSE AND SENATE)

By: Representatives Parrish of the 156th, Rice of the 51st, Parham of the 141st, and Powell of the 29th

A BILL TO BE ENTITLED
AN ACT

To repeal Article 28 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to motor vehicle warranty rights; to enact a new Article 28 of Chapter 1 of Title 10 to be known as the "Georgia Lemon Law"; to provide for a short title; to provide for legislative intent; to provide for definitions; to provide for documents and information to be provided to consumers; to provide for a duty of the manufacturer to repair and correct nonconformities; to provide for replacement or repurchase of nonconforming vehicles; to provide for an informal dispute settlement mechanism; to provide for arbitration; to provide for an appeal of the arbitration decision; to require exhaustion of remedies by the consumer; to provide for a new motor vehicle arbitration panel; to provide for resale of a nonconforming vehicle; to provide for collection of a consumer fee; to provide for new motor vehicle dealer liability; to provide for other rights and remedies; to provide for staffing; to provide for rulemaking authority; to provide for severability; to provide for waiver of rights under provisions as contrary to public policy; to provide for related matters; to provide effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 28 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to motor vehicle warranty rights, is amended by striking it in its entirety and inserting in its place a new article to read as follows:

"ARTICLE 28

10-1-780.

This article shall be known and may be cited as the 'Georgia Lemon Law.'

10-1-781.

The General Assembly recognizes that a new motor vehicle is a major consumer purchase and that a defectively manufactured new motor vehicle is likely to create hardship for, or may cause injury to, the consumer. It is the intent of the General Assembly to create a procedure for expeditious resolution of complaints and disputes concerning nonconforming new motor vehicles, to provide a method for notifying consumers of their rights under this article, and to ensure that consumers receive information, documents, and service necessary to enable them to exercise their rights under this article. In enacting these comprehensive measures, the General Assembly intends to encourage manufacturers to take all steps necessary to correct nonconformities in new motor vehicles and to create the proper blend of private and public remedies necessary to enforce this article.

10-1-782.

Unless the context clearly requires otherwise, as used in this article, the term:

(1) 'Adjusted capitalized cost' means the amount shown as the adjusted capitalized cost in the lease agreement.

(2) 'Administrator' means the administrator appointed pursuant to Code Section 10-1-395 or his or her designee.

(3) 'Authorized agent' means any person, including a franchised motor vehicle dealer, who is authorized by the manufacturer to service motor vehicles.

(4) 'Collateral charges' means charges incurred by a consumer as a result of the purchase of a new motor vehicle including, but not limited to, charges attributable to factory or dealer installed options, sales tax and title charges, and earned finance charges.

(5) 'Consumer' means each of the following:

(A) A person who purchases or leases a new motor vehicle for personal, family, or household use and not for the purpose of selling or leasing the new motor vehicle to another person; and

(B) A person who purchases or leases ten or fewer new motor vehicles a year for business purposes other than limousine rental services.

(6) 'Days' means calendar days.

(7) 'Express warranty' means a warranty which is given by the manufacturer in writing.

(8) 'Incidental costs' means any reasonable expenses incurred by a consumer in connection with the repair of a new motor vehicle, including, but not limited to, payments to new motor vehicle dealers for the attempted repair of nonconformities, towing charges, and the costs of obtaining alternative transportation.

1 (9) 'Informal dispute settlement mechanism' means any procedure established, employed,
2 utilized, or sponsored by a manufacturer for the purpose of resolving disputes with
3 consumers under this article.

4 (10) 'Lemon law rights period' means the period ending two years after the date of the
5 original delivery of a new motor vehicle to a consumer or the first 24,000 miles of
6 operation after delivery of a new motor vehicle to the original consumer, whichever
7 occurs first. The lemon law rights period shall be extended by one day for each day that
8 repair services are not available to the consumer as a direct result of a strike, war,
9 invasion, terrorist act, blackout, fire, flood, other disaster, or declared state of emergency.

10 (11) 'Lessee' means any consumer who enters into a written lease agreement or contract
11 to lease a new motor vehicle for a period of at least one year and is responsible for repairs
12 to such vehicle.

13 (12) 'Lessee cost' means the aggregate payment made by the lessee at the inception of
14 the lease agreement or contract, inclusive of any allowance for a trade-in vehicle, and all
15 other lease payments made by or on behalf of the lessee to the lessor.

16 (13) 'Lessor' means a person who holds title to a new motor vehicle that is leased to a
17 consumer under a written lease agreement or contract or who holds the lessor's rights
18 under such agreement.

19 (14) 'Manufacturer' means any person engaged in the business of constructing or
20 assembling new motor vehicles or engaged in the business of importing or receiving
21 imports of new motor vehicles into the United States for the purpose of selling or
22 distributing them to new motor vehicle dealers.

23 (15) 'New motor vehicle' means any self-propelled vehicle primarily designed for the
24 transportation of persons or property over the public highways that was leased,
25 purchased, or registered in this state by the consumer or lessor to whom the original
26 motor vehicle title was issued without previously having been issued to any person other
27 than a new motor vehicle dealer. The term 'new motor vehicle' does not include any
28 vehicle on which the title and other transfer documents show a used, rather than new,
29 vehicle. The term 'new motor vehicle' also does not include trucks with more than 12,000
30 pounds gross vehicle weight rating, motorcycles, or golf carts. If a new motor vehicle is
31 a motor home, this article shall apply to the self-propelled vehicle and chassis, but does
32 not include those portions of the vehicle designated, used, or maintained primarily as
33 living quarters, office, or commercial space.

34 (16) 'New motor vehicle dealer' means a person who holds a dealer agreement with a
35 manufacturer for the sale of new motor vehicles, who is engaged in the business of
36 purchasing, selling, servicing, exchanging, leasing, or dealing in new motor vehicles, or

1 who is licensed or otherwise authorized to utilize trademarks or service marks associated
2 with one or more makes of motor vehicles in connection with such sales.

3 (17) 'Nonconformity' means a defect, a serious safety defect, or a condition, any of which
4 substantially impairs the use, value, or safety of a new motor vehicle to the consumer or
5 renders the new motor vehicle nonconforming to a warranty. A nonconformity does not
6 include a defect, a serious safety defect, or a condition that is the result of abuse, neglect,
7 or unauthorized modification or alteration of the new motor vehicle.

8 (18) 'Panel' means the new motor vehicle arbitration panel as designated in this article.

9 (19) 'Person' shall have the same meaning as provided in Code Section 10-1-392.

10 (20) 'Purchase price' means, in the case of a sale of a new motor vehicle to a consumer,
11 the cash price of the new motor vehicle appearing in the sales agreement or contract,
12 inclusive of any reasonable allowance for a trade-in vehicle. In the case of a lease
13 executed by a consumer, 'purchase price' refers to the agreed upon value of the vehicle
14 as shown in the lease agreement or contract.

15 (21) 'Reacquired vehicle' means a new motor vehicle with an alleged nonconformity that
16 has been replaced or repurchased by the manufacturer as the result of any court order or
17 judgment, arbitration decision, voluntary settlement entered into between a manufacturer
18 and the consumer, or voluntary settlement between a new motor vehicle dealer and a
19 consumer in which the manufacturer directly or indirectly participated.

20 (22) 'Reasonable number of attempts' under the lemon law rights period shall be as set
21 forth in subsection (a) of Code Section 10-1-784.

22 (23) 'Reasonable offset for use' means an amount calculated by multiplying the purchase
23 price of a vehicle by the number of miles directly attributable to consumer use as of the
24 date on which the consumer first delivered the vehicle to the manufacturer, its authorized
25 agent, or the new motor vehicle dealer for repair of a nonconformity and dividing the
26 product by 120,000, or in the case of a motor home 90,000.

27 (24) 'Replacement motor vehicle' means a new motor vehicle that is identical or at least
28 equivalent to the motor vehicle to be replaced as the motor vehicle to be replaced existed
29 at the time of purchase or execution of the lease.

30 (25) 'Serious safety defect' means a life-threatening defect or a malfunction that impedes
31 the consumer's ability to control or operate the motor vehicle for ordinary use or
32 reasonable intended purposes or creates a risk of fire or explosion.

33 (26) 'Superior court' means the superior court in the county where the consumer resides,
34 except if the consumer does not reside in this state, then the superior court in the county
35 where an arbitration hearing was conducted pursuant to this article.

1 (27) 'Warranty' means any manufacturer's express warranty or any affirmation of fact
2 or promise made by the manufacturer in connection with the sale of a new motor vehicle
3 to a consumer concerning the vehicle's materials, workmanship, operation, or
4 performance which becomes part of the basis of the bargain. The term shall not include
5 any extended coverage purchased by the consumer as a separate item or any statements
6 made by the dealer in connection with the sale of a motor vehicle to a consumer which
7 relate to the nature of the material or workmanship and affirm or promise that such
8 material or workmanship is free of defects or will meet a specified level of performance.

9 10-1-783.

10 (a) The manufacturer shall publish an owner's manual and provide it to the new motor
11 vehicle dealer. The owner's manual shall include a clear and conspicuous listing of
12 addresses, e-mail addresses, facsimile numbers, and toll-free telephone numbers for the
13 manufacturer's customer service personnel who are authorized to direct activities regarding
14 repair of the consumer's vehicle. A manufacturer shall also provide all applicable
15 manufacturer's written warranties to the new motor vehicle dealer, who shall transfer the
16 owner's manual and all applicable manufacturer's written warranties to the consumer at the
17 time of purchase or vehicle acquisition.

18 (b) At the time of purchase or vehicle acquisition, the new motor vehicle dealer shall
19 provide the consumer with a written statement that explains the consumer's rights under
20 this article. The statement shall be written by the administrator and shall contain
21 information regarding the procedures and remedies under this article.

22 (c) By October 1 of each year, the manufacturer shall forward to the administrator one
23 copy of the owner's manual and the express warranty for each make and model of current
24 year new motor vehicles it sells in this state. To the extent the instructions, terms, and
25 conditions in the owner's manuals and express warranties for other models of the same
26 make are substantially the same, submission of the owner's manual and express warranty
27 for one model and a list of all other models for that make will satisfy the requirements of
28 this subsection.

29 (d) Each time the consumer's new motor vehicle is returned from being diagnosed or
30 repaired, the manufacturer, its authorized agent, or the new motor vehicle dealer shall
31 provide to the consumer a fully itemized and legible statement or repair order containing
32 a general description of the problem reported by the consumer; the date and the odometer
33 reading when the vehicle was submitted for repair; the date and odometer reading when the
34 vehicle was made available to the consumer; the results of any diagnostic test, inspection,
35 or test drive; a description of any diagnosis or problem identified by the manufacturer, its

1 authorized agent, or the new motor vehicle dealer; and an itemization of all work
2 performed on the vehicle, including, but not limited to, parts and labor.

3 (e) Upon request of the consumer, the manufacturer, its authorized agent, or the new motor
4 vehicle dealer shall provide a copy of any report or computer reading compiled by the
5 manufacturer's representative regarding inspection, diagnosis, or test drive of the
6 consumer's new motor vehicle.

7 10-1-784.

8 (a)(1) If a consumer reports a nonconformity during the lemon law rights period, the
9 manufacturer, its authorized agent, or the new motor vehicle dealer shall be allowed a
10 reasonable number of attempts to repair and correct the nonconformity. A reasonable
11 number of attempts shall be deemed to have been undertaken by the manufacturer, its
12 authorized agent, or the new motor vehicle dealer if, during the lemon law rights period:

13 (A) A serious safety defect has been subject to repair one time and the serious safety
14 defect has not been corrected;

15 (B) The same nonconformity has been subject to repair three times, and the
16 nonconformity has not been corrected; or

17 (C) The vehicle is out of service by reason of repair of one or more nonconformities
18 for a cumulative total of 30 days.

19 If the vehicle is being repaired by the manufacturer through an authorized agent or a new
20 motor vehicle dealer on the date that the lemon law rights period expires, the lemon law
21 rights period shall be extended until that repair attempt has been completed.

22 (2)(A) If the manufacturer through an authorized agent or a new motor vehicle dealer
23 is unable to repair and correct a nonconformity after a reasonable number of attempts,
24 the consumer shall notify the manufacturer by statutory overnight delivery or certified
25 mail, return receipt requested, of the need to repair and correct the nonconformity. The
26 notice shall be sent to the address provided by the manufacturer in the owner's manual.
27 The manufacturer shall have 28 days from its receipt of the notice to make a final
28 attempt to repair and correct the nonconformity.

29 (B) By not later than the close of business on the seventh day following receipt of
30 notice from the consumer, the manufacturer shall notify the consumer of the location
31 of a repair facility that is reasonably accessible to the consumer. By not later than the
32 close of business on the fourteenth day following the manufacturer's receipt of notice,
33 the consumer shall deliver the nonconforming new motor vehicle to the designated
34 repair facility.

1 (C) If the manufacturer fails to notify the consumer of the location of a reasonably
2 accessible repair facility within seven days of its receipt of notice, or fails to complete
3 the final attempt to repair and correct the nonconformity with the 28 day time period,
4 the requirement that it be given a final attempt to repair and correct the nonconformity
5 shall not apply. However, if the consumer delivers the nonconforming new motor
6 vehicle to the designated repair facility more than 14 days from the date the
7 manufacturer receives notice from the consumer, the 28 day time period shall be
8 extended and the manufacturer shall have 14 days from the date the nonconforming
9 new motor vehicle is delivered to the repair facility to complete the final attempt to
10 repair and correct the nonconformity.

11 (3) No manufacturer, its authorized agent, or new motor vehicle dealer may refuse to
12 diagnose or repair any alleged nonconformity for the purpose of avoiding liability under
13 this article.

14 (b)(1) If the manufacturer, through an authorized agent or new motor vehicle dealer to
15 whom the manufacturer directs the consumer to deliver the vehicle, is unable to correct
16 a nonconformity after the final attempt, or if a vehicle has been out of service by reason
17 of repair of one or more nonconformities for 30 days during the lemon law rights period,
18 the manufacturer shall, at the option of the consumer, repurchase or replace the vehicle.
19 The consumer shall notify the manufacturer, in writing by statutory overnight delivery
20 or certified mail, return receipt requested, of which option the consumer elects. The
21 manufacturer shall have 20 days from receipt of the notice to repurchase or replace the
22 vehicle.

23 (2)(A) If a consumer who is a lessee elects to receive a replacement motor vehicle, in
24 addition to providing the replacement motor vehicle, the manufacturer shall pay to the
25 lessor an amount equal to all charges that the lessor will incur as a result of the
26 replacement transaction and shall pay the lessee an amount equal to all incidental costs
27 that have been incurred by the lessee plus all charges that the lessee will incur as a
28 result of the replacement transaction. If a lessee elects to receive a replacement motor
29 vehicle, all terms of the existing lease agreement or contract shall remain in force and
30 effect, except that the vehicle identification information contained in the lease
31 agreement or contract shall be changed to conform to the vehicle identification
32 information of the replacement vehicle.

33 (B) If a consumer who is not a lessee elects to receive a replacement motor vehicle, in
34 addition to providing the replacement motor vehicle, the manufacturer shall pay to the
35 consumer an amount equal to all incidental costs incurred by the consumer plus all
36 charges that the consumer will incur as a result of the replacement transaction.

1 (3)(A) If a consumer who is a lessee elects a repurchase, the manufacturer shall pay to
2 the lessee an amount equal to all payments made by the lessee under the lease
3 agreement or contract, including, but not limited to, the lessee cost, plus all incidental
4 costs, less a reasonable offset for use of the nonconforming new motor vehicle. The
5 manufacturer shall pay to the lessor an amount equal to 110 percent of the adjusted
6 capitalized cost of the nonconforming new motor vehicle. After the lessor has received
7 payment from the manufacturer as specified in this subparagraph and payment from the
8 consumer of all past due charges, if any, the consumer shall have no further obligation
9 to the lessor.

10 (B) If a consumer who is not a lessee elects a repurchase, the manufacturer shall pay
11 to the consumer an amount equal to the purchase price of the nonconforming new
12 motor vehicle plus all collateral charges and incidental costs, less a reasonable offset
13 for use of the nonconforming new motor vehicle. Payment shall be made to the
14 consumer and lienholder of record, if any, as their interests may appear on the records
15 of ownership.

16 10-1-785.

17 (a)(1) If a manufacturer does not replace or repurchase a nonconforming new motor
18 vehicle after being requested to do so under subsection (b) of Code Section 10-1-784, the
19 consumer may move to compel replacement or repurchase by applying for arbitration
20 pursuant to Code Section 10-1-786. However, if a manufacturer has established an
21 informal dispute settlement mechanism which the administrator has certified as
22 complying with the provisions and rules of this article, the consumer shall be eligible to
23 apply for arbitration only after submitting a dispute under this article to the informal
24 dispute settlement mechanism.

25 (2) A consumer must file a claim with the manufacturer's certified informal dispute
26 settlement mechanism no later than one year after expiration of the lemon law rights
27 period.

28 (3) After a decision has been rendered by the certified informal dispute settlement
29 mechanism, the consumer is eligible to apply for arbitration pursuant to Code Section
30 10-1-786.

31 (4) If a decision is not rendered by the certified informal dispute settlement mechanism
32 within 40 days of filing, the requirement that the consumer submit his or her dispute to
33 the certified informal dispute settlement mechanism shall not apply and the consumer is
34 eligible to apply for arbitration under Code Section 10-1-786.

(b) Certified informal dispute settlement mechanisms shall be required to take into account the principles contained in and any rules promulgated under this article and shall take into account all legal and equitable factors germane to a fair and just decision. A decision shall include any remedies appropriate under the circumstances, including repair, replacement, refund, and reimbursement for collateral charges and incidental costs. For purposes of this Code section, the phrase 'take into account the principles contained in and any rules promulgated under this article' means to be aware of the provisions of this article, to understand how they might apply to the circumstances of the particular dispute, and to apply them if it is appropriate and fair to both parties to do so.

(c) A certified informal dispute settlement mechanism shall keep such records as prescribed by the administrator in rules promulgated under this article and shall allow the administrator, without notice, to inspect and obtain copies of the records. Copies of any records requested by the administrator shall be provided promptly to the administrator at no cost.

(d) A manufacturer may apply to the administrator for certification of its informal dispute settlement mechanism. The administrator may, in his or her discretion, impose requirements on an informal dispute settlement mechanism in order for it to be certified. Within a reasonable time following receipt of the application, the administrator shall certify the informal dispute settlement mechanism or notify the manufacturer of the reason or reasons for denial of the requested certification.

(e) At any time the administrator has reason to believe that a certified informal dispute settlement mechanism is no longer in compliance with this article, he or she may notify the manufacturer of intent to revoke the informal dispute settlement mechanism's certification. The notice shall contain a statement of the reason or reasons for the revocation.

(f) The manufacturer shall have ten days from its receipt of notice of denial of requested certification or notice of intent to revoke certification to submit a written request for a hearing to contest the denial or intended revocation. If a hearing is requested, it shall be held within 30 days of the administrator's receipt of the hearing request. The hearing shall be conducted by the Office of State Administrative Hearings following the procedures set forth in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

(g) No representation shall be made to a consumer that his or her dispute must be submitted to an informal dispute settlement mechanism that is not certified by the administrator pursuant to this Code section.

10-1-786.

1 (a) A consumer shall request arbitration by filing a written application for arbitration with
2 the administrator. The application must be filed no later than one year from the date of
3 expiration of the lemon law rights period or 60 days from the conclusion of the certified
4 informal dispute settlement mechanism's proceeding, whichever occurs later.

5 (b)(1) After receiving an application for arbitration, the administrator shall determine
6 whether the dispute is eligible for arbitration. Manufacturers shall be required to submit
7 to arbitration under this article if the consumer's dispute is deemed eligible for arbitration
8 by the administrator. Disputes deemed eligible for arbitration shall be assigned to an
9 arbitrator or arbitrators appointed pursuant to Code Section 10-1-789.

10 (2)(A) A consumer whose dispute is determined to be ineligible for arbitration by the
11 administrator may appeal the determination of ineligibility to an arbitrator or arbitrators
12 appointed pursuant to Code Section 10-1-789.

13 (B) If the arbitrator or arbitrators determine that the consumer's dispute is eligible for
14 arbitration, the arbitrator or arbitrators shall retain jurisdiction and the consumer's
15 dispute shall proceed in accordance with this Code section.

16 (C) If the arbitrator or arbitrators determine that the consumer's dispute is not eligible
17 for arbitration, a written decision shall be prepared and sent to the consumer and
18 manufacturer by certified mail, return receipt requested.

19 (D) The decision of ineligibility may be appealed by the consumer under the provisions
20 set forth in subsection (a) of Code Section 10-1-787. On appeal, the court shall
21 consider only the issue of eligibility for arbitration.

22 (3) If the court finds that a consumer's appeal from a determination of ineligibility is
23 frivolous or has been filed in bad faith or for the purpose of harassment, the court may
24 require the consumer to pay to the administrator all costs incurred as a direct result of the
25 appeals from the administrator's determination of ineligibility.

26 (c) A lessee shall notify the lessor of the pending arbitration, in writing, within ten days
27 of the lessee's receipt of notice that a dispute has been deemed eligible for arbitration and
28 shall provide to the arbitrator or arbitrators proof that notice was given to the lessor.
29 Within ten days of its receipt of notice from the lessee, a lessor may petition the arbitrator
30 or arbitrators to be a party to the arbitration proceeding.

31 (d) The arbitrator or arbitrators shall make every effort to conduct the arbitration hearing
32 within 40 days from the date the dispute is deemed eligible for arbitration. The hearing
33 shall be held at a location that is reasonably convenient to the Georgia consumer. Failure
34 to hear the case within 40 days shall not divest authority of the arbitrator or arbitrators to
35 hear the dispute or void any decision ultimately rendered.

36 (e) If the arbitrator or arbitrators determine:

1 (1) That a reasonable number of attempts has been undertaken to repair and correct the
2 nonconformity and that the manufacturer was given the opportunity to make a final
3 attempt to repair and correct the nonconformity and was unable to correct it; or

4 (2) That a new motor vehicle was out of service by reason of repair of one or more
5 nonconformities for a cumulative total of 30 days within the lemon law rights period,
6 the consumer shall be awarded replacement or repurchase of the new motor vehicle as
7 provided under Code Section 10-1-784. The arbitrator or arbitrators also may award
8 attorney's fees and technical or expert witness fees to a consumer who prevails.

9 (f) The decision of the arbitrator or arbitrators shall be in writing, be signed, and contain
10 findings of fact and conclusions of law. The original signed decision shall be filed with the
11 administrator and copies shall be sent to all parties. The filing of the decision with the
12 administrator constitutes entry of the decision.

13 (g) A decision of the arbitrator or arbitrators that has become final under the provisions of
14 subsection (a) of Code Section 10-1-787 may be filed with the clerk of the superior court,
15 shall have all the force and effect of a judgment or decree of the court, and may be enforced
16 in the same manner as any other judgment or decree.

17 (h) No arbitrator may be required to testify concerning any arbitration and the arbitrator's
18 notes or other records are not subject to discovery. This provision does not extend to
19 testimony or documents sought in connection with legal claims brought against an
20 arbitrator arising out of an arbitration proceeding.

21 10-1-787.

22 (a) The decision of the arbitrator or arbitrators is final unless a party to the arbitration,
23 within 30 days of entry of the decision, appeals the decision to the superior court. A party
24 who appeals a decision shall follow the procedures set forth in Article 2 of Chapter 3 of
25 Title 5, and any appeal shall be de novo; however, the decision of the arbitrator or
26 arbitrators shall be admissible in evidence.

27 (b) If the manufacturer appeals, the court may require the manufacturer to post security for
28 the consumer's financial loss due to the passage of time for review.

29 (c) If the manufacturer appeals and the consumer prevails, recovery, in addition to the
30 arbitrator's award, shall include all charges incurred by the consumer during the pendency
31 of, or as a result of, the appeal, including, but not limited to, continuing collateral and
32 incidental costs, technical or expert witness fees, attorney's fees, and court costs.

33 (d) A manufacturer which does not appeal a decision in favor of a consumer must fully
34 comply with the decision within 40 days of entry thereof. If a manufacturer does not fully
35 comply within the 40 day time period, the administrator may issue an order imposing a

1 civil penalty of up to \$1,000.00 per day for each day that the manufacturer remains out of
2 compliance. The provisions of Code Sections 10-1-398 and 10-1-398.1 shall apply in
3 connection with the imposition of a civil penalty under this subsection. It shall be an
4 affirmative defense to the imposition of a civil penalty under this subsection that a delay
5 or failure to comply was beyond the manufacturer's control or that a delay was acceptable
6 to the consumer.

7 10-1-788.

8 The provisions of this article are not available to a consumer in a civil action unless the
9 consumer has first exhausted all remedies provided for in this article.

10 10-1-789.

11 (a) The administrator shall establish a new motor vehicle arbitration panel to resolve
12 disputes between consumers and manufacturers arising under this article. The
13 administrator, in his or her discretion, may operate the panel by contracting with public or
14 private entities to conduct arbitrations under this article or by appointing individuals to
15 serve as panel member arbitrators. An arbitrator shall be licensed to practice law in the
16 State of Georgia and a member in good standing of the State Bar of Georgia or shall have
17 at least two years' experience in professional arbitration or dispute resolution. No
18 arbitrator shall be affiliated with or involved in the manufacture, distribution, sale, lease,
19 or servicing of motor vehicles.

20 (b) Panel member arbitrators and entities that contract with the administrator to provide
21 arbitration services shall be compensated for time and expenses at a rate to be determined
22 by the administrator.

23 (c) Each arbitration proceeding shall be conducted by either one or three arbitrators, each
24 of whom is to be assigned by the administrator or contracted entity.

25 (d) Neither the administrator, an entity with which the administrator has contracted, nor
26 any arbitrator shall be civilly liable for any decision, action, statement, or omission made
27 in connection with any proceeding under this article, except in circumstances where the
28 decision, action, statement, or omission was made with malice or gross negligence.

29 10-1-790.

30 (a) No manufacturer, its authorized agent, new motor vehicle dealer, or other transferor
31 shall knowingly resell, either at wholesale or retail, lease, transfer a title, or otherwise
32 transfer a reacquired vehicle, including a vehicle reacquired under a similar statute of any

1 other state, unless the vehicle is being sold for scrap and the manufacturer has notified the
2 administrator of the proposed sale or:

3 (1) The fact of the reacquisition and nature of any alleged nonconformity are clearly and
4 conspicuously disclosed in writing to the prospective transferee, lessee, or buyer; and

5 (2) The manufacturer warrants to correct such nonconformity for a term of one year or
6 12,000 miles, whichever occurs first.

7 A knowing violation of this subsection shall constitute an unfair or deceptive act or practice
8 in the conduct of consumer transactions under Part 2 of Article 15 of Chapter 1 of Title 10
9 and will subject the violator to an action by a consumer under Code Section 10-1-399.

10 (b) The manufacturer shall have 30 days to notify the administrator that a vehicle has been
11 reacquired in this state under the provisions of this article. The notice shall be legible and
12 include, at a minimum, the vehicle year, make, model, and identification number; the date
13 and mileage at the time the vehicle was reacquired; the nature of the alleged
14 nonconformity; the reason for reacquisition; and the name and address of the original
15 consumer. When the manufacturer resells, leases, transfers, or otherwise disposes of a
16 reacquired vehicle, the manufacturer shall, within 30 days of the resale, lease, transfer, or
17 disposition, notify the administrator of the vehicle year, make, model, and identification
18 number; the date of the sale, lease, transfer, or disposition of the vehicle; and the name and
19 address of the buyer, lessee, or transferee.

20 (c) If a manufacturer resells, leases, transfers, or otherwise disposes of a motor vehicle in
21 this state that it reacquired under a similar statute of any other state, the manufacturer shall,
22 within 30 days of the resale, lease, transfer, or disposition, notify the administrator of the
23 transaction. The contents of the notice shall comply with the requirements of
24 subsection (b) of this Code section.

25 (d) Manufacturers shall use forms approved by the administrator. The forms shall contain
26 the information required under this Code section and any other information the
27 administrator deems necessary for implementation of this Code section.

28 10-1-791.

29 (a) A fee of \$3.00 shall be collected by the new motor vehicle dealer from the consumer
30 at completion of a sale or execution of a lease of each new motor vehicle. The fee shall be
31 forwarded quarterly to the Office of Planning and Budget for deposit in the new motor
32 vehicle arbitration account created in the state treasury. The payments are due and payable
33 the first day of the month in each quarter for the previous quarter's collection and shall be
34 mailed by the new motor vehicle dealer not later than the twentieth day of such month.
35 The first day of the month in each quarter is July 1, October 1, January 1, and April 1 for

1 each year. Consumer fees in the account shall be used for the purposes of this article.
2 Funds in excess of the appropriated amount remaining in the new motor vehicle arbitration
3 account at the end of each fiscal year shall be transferred to the general treasury. The new
4 motor vehicle dealer shall retain \$1.00 of each fee collected to cover administrative costs.

5 (b) The administrator appointed pursuant to subsection (g) of Code Section 10-1-395 shall
6 have the power to enforce the provisions of this Code section. The administrator's
7 enforcement power shall include:

8 (1) The authority to investigate alleged violations through use of all investigative powers
9 available under Part 2 of Article 15 of this chapter, the 'Fair Business Practices Act'; and

10 (2) The authority to initiate proceedings, pursuant to Code Section 10-1-397, in the event
11 of a violation of this Code section. Such proceedings include, without limitation,
12 issuance of a cease and desist order, a civil penalty order imposing a civil penalty up to
13 a maximum of \$2,000.00 for each violation, and proceedings to seek additional relief in
14 any superior court of competent jurisdiction. The provisions of Code Sections 10-1-398,
15 10-1-398.1, 10-1-402, and 10-1-405 shall apply to proceedings initiated by the
16 administrator under this Code section.

17 10-1-792.

18 (a) Except as provided in subsection (a) of Code Section 10-1-790, this article shall not
19 create or give rise to any cause of action by manufacturers or consumers against new motor
20 vehicle dealers. No new motor vehicle dealer shall be held liable by a manufacturer or a
21 consumer for any collateral charges, incidental charges, costs, purchase price refunds, or
22 vehicle replacements. Manufacturers and consumers shall not make new motor vehicle
23 dealers party to an arbitration proceeding or any other proceeding under this article. A new
24 motor vehicle dealer that is named as a party in any proceeding brought by a consumer or
25 a manufacturer under this article, except as provided in subsection (a) of Code Section
26 10-1-790, shall be entitled to an award of reasonable attorney's fees and expenses of
27 litigation incurred in connection with such proceeding.

28 (b) The provisions of this article shall not impair any obligation under any
29 manufacturer-dealer franchise agreement; provided, however, that any provision of any
30 manufacturer-dealer franchise agreement which attempts to shift any duty, obligation,
31 responsibility, or liability imposed upon a manufacturer by this article to a new motor
32 vehicle dealer, either directly or indirectly, shall be void and unenforceable, except for any
33 liability imposed upon a manufacturer by this article which is directly caused by the gross
34 negligence of the dealer in attempting to repair the motor vehicle after such gross

1 negligence has been determined by the hearing officer, as provided in Article 22 of this
2 chapter, the 'Georgia Motor Vehicle Franchise Practices Act.'

3 10-1-793.

4 (a) A violation of this article shall constitute an unfair and deceptive act or practice in the
5 conduct of consumer transactions under Part 2 of Article 15 of this chapter, the 'Fair
6 Business Practice Act'; provided, however, that enforcement against such violations shall
7 be by public enforcement by the administrator and, except as provided in subsection (a) of
8 Code Section 10-1-790, shall not be enforceable through private action under Code Section
9 10-1-399.

10 (b) Except as otherwise provided, this article is cumulative with other laws and is not
11 exclusive. The rights and remedies provided for in this article shall be in addition to any
12 other rights and remedies that are otherwise available to a consumer under any other law.

13 10-1-794.

14 All administrative staff hired by the administrator to aid in the administration of this article
15 shall be in the unclassified service and compensated at a salary determined by the
16 administrator.

17 10-1-795.

18 The administrator shall promulgate rules and regulations and establish procedures
19 necessary to carry into effect, implement, and enforce the provisions of this article. The
20 authority granted to the administrator pursuant to this Code section shall be exercised at all
21 times in conformity with Chapter 13 of Title 50, the 'Georgia Administrative Procedure
22 Act.'

23 10-1-796.

24 If any provision of this article or its application to any person or circumstance is held
25 invalid, the invalidity does not affect other provisions or applications of this article which
26 can be given effect without the invalid provision or application, and to this end the
27 provisions of this article are severable.

28 10-1-797.

29 Any agreement entered into by a consumer that waives, limits, or disclaims the rights set
30 forth in this article shall be unenforceable as contrary to public policy."

SECTION 2.

Code Section 10-1-795 as enacted by this Act shall become effective on this Act's approval by the Governor or upon its becoming law without such approval; the remaining provisions of this Act shall become effective January 1, 2009.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.